Wilder Manufacturing Company v. *Corn Products Refining Company*, 236 U. S. 165.

For a discussion of this interesting question arising under the Anti-Trust Act, see NOTES, p. 691.

INSURANCE — MUTUAL BENEFIT INSURANCE — CHANGE OF BENEFICIARY: EFFECT OF PAYMENT OF ASSESSMENTS BY PRIOR BENEFICIARY. — The wife of a member of a fraternal benefit society paid the assessments on the policy, which named her as beneficiary, and had been delivered to her by her husband with permission to keep up the assessments. She was then divorced and the husband named a new beneficiary in accordance with the by-laws of the society. Further assessments tendered by her were refused by the society, and on the death of the insured she claims the proceeds of the policy. *Held*, that she cannot recover. *Schiller-Bund* v. *Knack*, 150 N. W. 337 (Mich.).

Unlike an ordinary life insurance policy, a fraternal insurance certificate, the terms of which permit the insured to change the beneficiary at his pleasure, gives the beneficiary no vested right. *Woodruff* v. *Tilman*, 112 Mich. 188, 70 N. W. 420; *Masonic Benefit Ass'n* v. *Bunch*, 109 Mo. 560, 19 S. W. 25. But the beneficiary may otherwise acquire such an equitable right as to estop the member from exercising this power, as, for example, by a contract not to change the beneficiary. *Webster* v. *Welch*, 57 N. Y. App. Div. 558, 68 N. Y. Supp. 55; *In re Reid's Estate*, 170 Mich. 476, 136 N. W. 476; *Leaf* v. *Leaf*, 92 Ky. 166, 17 S. W. 354. But if, as the court finds on the facts in the principal case, there is a mere payment of the assessments by the beneficiary named, without any contract with the member, there is nothing to prevent the member's making the change. It is said that the beneficiary pays any assessments with full notice of the contingency of his right. *Jory* v. *Supreme Council*, 105 Cal. 20, 38 Pac. 524; *Fisk* v. *Equitable Aid Union*, 7 Sadler (Pa.) 567, 11 Atl. 84; *Spengler* v. *Spengler*, 65 N. J. Eq. 176, 55 Atl. 285. Nevertheless, it has been held that the prior beneficiary should have a lien for the amount of the assessments he has paid, on the ground that to deprive him of all relief would be unconscionable. *Grand Lodge A. O. U. W.* v. *McFadden*, 213 Mo. 269, 111 S. W. 1172; *cf. Supreme Council of Royal Arcanum* v. *McKnight*, 238 Ill. 349, 87 N. E. 299; see *Masonic Benefit Ass'n* v. *Bunch*, *supra*. But in the absence of mistake, payments made without any agreement, express or implied, appear to be purely voluntary, and should afford no basis for recovery. *Supreme Lodge N. E. O. P.* v. *Hines*, 82 Conn. 315, 73 Atl. 791; *Heasley* v. *Heasley*, 191 Pa. 539, 43 Atl. 364. The denial of all relief by the principal case is therefore proper, so long as its rather improbable construction of the facts is adopted.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — CONFLICT BETWEEN FEDERAL AND STATE POLICE REGULATIONS: SAFETY APPLIANCE LAWS. — A state statute required railroads to equip all cars with grab-irons and handholds. The Federal Safety Appliance Act subsequently imposed a similar requirement, with some different specifications as to details. The state railroad commission now brings suit for a violation of the state statute as to a car moving on a railroad engaged in interstate commerce. *Held*, that in this case the Federal Act has superseded the state statute. *Southern Ry. Co.* v. *R. R. Comm. of Indiana*, 236 U. S. 439.

The Supreme Court in this decision adds another to the long list of cases which hold that once Congress has acted in the exercise of its paramount power to regulate interstate commerce, the police power of the state is thereby ousted to that extent, even though the requirements imposed by state legislation are not themselves in conflict with the federal regulations. *Houston &*

Texas Ry. v. *United States*, 234 U. S. 342, 351; *Erie R. R.* v. *New York*, 233 U. S. 671. For a discussion of the principal case in the district court, see 26 HARV. L. REV. 757.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — FEDERAL EMPLOYER'S LIABILITY ACT: ASSUMPTION OF THE RISK AS AFFECTED BY EMPLOYER'S VIOLATION OF STATE FACTORY ACT. — The plaintiff was injured, while engaged in the car shops of an interstate carrier upon the repair of a car used in interstate commerce, by machinery left unguarded in violation of the state "factory act." He now sues under the Federal Employer's Liability Act, which provides (35 STAT. AT L. 65, c. 149, § 4) that no employee shall be held to have assumed the risks of his employment where the violation "of any statute enacted for the safety of employees contributed to the injury." *Held*, that assumption of the risk precludes recovery. *Lauer* v. *Northern Pacific Ry. Co.*, 145 Pac. 606 (Sup. Ct., Wash.).

The decision follows a recent *dictum* of the Supreme Court to the effect that the word "statute" in the above quoted provision must, in the interest of uniformity, be construed to refer to federal statutes only. *Seaboard Air Line R. Co.* v. *Horton*, 233 U. S. 492, 503. In the actual case, however, the only state statute involved was a state liability statute which was plainly superseded by the federal act. If the act be construed as evidencing a desire for absolute uniformity in this particular, it would follow that no state statute enacted for the protection of employees, though not superseded by federal legislation, can have any effect in actions under the federal act. But it is submitted that violation of a subsisting state statute of this character would clearly be admissible to show negligence. See THORNTON, FEDERAL EMPLOYER'S LIABILITY, 2 ed., § 47. The prevailing tendency of recent common-law decisions has been to deny the defense of assumption of risk in case of injury due to violation of a statutory duty toward employees. See 26 HARV. L. REV. 262. Federal statutes of this character cover a relatively small portion of the field and leave in force a vast number of state statutes enacted for the protection of employees. It seems much more reasonable to think that Congress intended to adopt the prevailing common-law view as to the assumption of the risk of violation of any existing statutory duty, whether federal or state, than to think that in the interest of uniformity this large body of safety legislation was intended to be almost wholly overridden as to interstate employers, without the substitution of any similar federal legislation. It is to be regretted that the Washington court felt bound to overrule its previous decision. *Opsahl* v. *Northern Pacific Ry. Co.*, 78 Wash. 197, 138 Pac. 681.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — WHETHER COVENANT NOT TO ASSIGN BINDS ASSIGNEES NOT NAMED. — A lease contained a covenant not to assign without the consent of the lessor, with the usual clause of reëntry. After one assignment by license, that assignee in turn assigned, but without permission. The lessor now seeks to enter for breach of the covenant, which did not in terms bind assignees. *Held*, that the plaintiff may enter. *Goldstein* v. *Saunders*, 138 L. T. J. 314 (Ch. Div.).

No question arises in this case as to whether the condition survived the first license to assign, since the rule in *Dumpor's Case*, that a prior license waiving a condition against assignment of the lease destroys the condition utterly, has been abrogated by statute in England. 22 & 23 VICT., c. 35; 23 & 24 VICT., c. 38, § 6. *Cf. Dumpor* v. *Symmes*, 4 Co. 119 *b*. There remains the problem whether the assignee was bound by a covenant not expressly naming assigns. If the covenant in terms mentions assigns, it runs with the land, and is binding upon them. *Williams* v. *Earle*, L. R. 3 Q. B. 739; *McEacharn* v. *Colton*, [1902]